

HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, *et al.*,

Plaintiffs,

and

THE SPOKANE TRIBE OF INDIANS,

Plaintiff-Intervenor,

v.

REGIONAL ADMINISTRATOR OF THE
ENVIRONMENTAL PROTECTION
AGENCY, *et al.*,

Defendants,

and

SPOKANE COUNTY; KAISER
ALUMINUM WASHINGTON LLC; and
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Defendant-Intervenors.

No. C11-1759BJR

STIPULATED JOINT MOTION TO
MODIFY SUMMARY JUDGMENT
BRIEFING SCHEDULE TO ALLOW
SETTLEMENT DISCUSSIONS, AND
ORDER

1
2 Defendants the Regional Administrator of the Environmental Protection Agency, et al.
3 (collectively “EPA”), Plaintiffs Sierra Club and Center for Environmental Law & Policy
4 (collectively “Sierra Club/CELP”), and Plaintiff-Intervenor Spokane Tribe of Indians jointly
5 submit this motion to extend by 137 days the existing dates set forth in the Court’s order (Dkt
6 245) for briefing on Plaintiffs’ motion for summary judgment and on EPA’s and the Intervenor-
7 Defendants’ prospective cross-motions for summary judgment, to allow for settlement
8 discussions and, if a proposed settlement can be reached, to obtain necessary approvals to enter
9 that agreement. Defendant-Intervenor State of Washington, Department of Ecology, Defendant-
10 Intervenor Spokane County, and Defendant-Intervenor Kaiser Aluminum Washington LLC,
11 stipulate to the relief requested by this motion.
12

13
14 The grounds for this stipulated joint motion and proposed modified briefing schedule are
15 as follows:
16

17 1) Plaintiffs Sierra Club/CELP filed on July 2, 2021, a motion for summary
18 judgment on their claim under the Clean Water Act that EPA has a nondiscretionary duty to issue
19 a total maximum daily load (“TMDL”) for polychlorinated biphenyls (“PCBs”) for the Spokane
20 River, and on their claim under the Administrative Procedure Act that challenges EPA’s Plan for
21 addressing PCBs in the Spokane River. Doc. 238. Plaintiff-Intervenor the Spokane Tribe joined
22 that motion on July 6, 2021. Doc. 243.
23

24 2) On July 16, 2021, the Parties filed a stipulated joint motion that set out a
25 comprehensive schedule for briefing on Plaintiffs’ summary judgment motion and on the
26 prospective cross-motions for summary judgment by EPA and the three Defendant-Intervenors.
27 Doc. 244. The Court granted the stipulated joint motion. Doc. 245. Under the Court’s order,
28
29

1 EPA's and the Defendant-Intervenors' opposition briefs and cross-motions for summary
2 judgment are due August 20, 2021.

3 3) Based on recent discussions between EPA, Plaintiffs, and the Tribe, these parties
4 believe that it may be possible to reach a settlement of this case within the next 137 days.
5 Accordingly, EPA, Plaintiffs, and the Tribe request that the dates in the briefing schedule entered
6 by the Court be extended by 137 days, to allow for settlement discussions and, if a proposed
7 settlement can be reached, to have that settlement approved by the relevant parties. Deferring
8 briefing at this time would facilitate those discussions, both by preserving the resources
9 otherwise spent on briefing, and by avoiding briefing that may be counter-productive to efforts to
10 reach an agreement. Granting this extension may also preserve the resources of the Court, by
11 averting the need to adjudicate the claims in this case if a settlement is reached.
12

13 4) Under this proposal, only the dates in the Court's existing briefing schedule
14 would be modified, by extending each of the dates by 137 days. As so modified, this proposed
15 schedule is as follows:
16
17

- | | | | |
|----|------|--|---------------|
| 18 | 1.A. | EPA's Opposition to Plaintiffs' Motion for SJ and | |
| 19 | | Cross-Motion for SJ (limited to 30 pages) | Jan. 4, 2022 |
| 20 | 1.B. | Oppositions to Plaintiffs' Motion for SJ and | |
| 21 | | Cross-Motions for SJ, by Spokane County, Kaiser Aluminum, | |
| 22 | | and the State of Washington | |
| | | (each limited to 20 pages) | Jan. 4, 2022 |
| 23 | 2.A. | Plaintiffs' Consolidated Opposition to the Cross-Motions | |
| 24 | | for SJ and Reply in Support of Plaintiffs' Motion for SJ | |
| | | (limited to 30 pages) | Jan. 25, 2022 |
| 25 | 2.B. | Spokane Tribe's Consolidated Opposition to the Cross-Motions | |
| 26 | | for SJ and Reply in Support of Plaintiffs' Motion for SJ | |
| 27 | | (limited to 20 pages) | Jan. 25, 2022 |
| 28 | 3.A. | EPA's Reply in Support of its Cross-Motion for SJ | |
| 29 | | (limited to 20 pages) | Feb 8, 2022 |

Feb 8, 2022

IT IS SO ORDERED, on this 18th day of August 2021.

Barbara Jacobs Rothstein
U.S. District Court Judge

1 Respectfully submitted by:

2 By: /S/ David Kaplan
3 David J. Kaplan
4 Attorney for Federal Defendants
5 United States Department of Justice
6 Environmental Defense Section
7 P.O. Box 7611
8 Washington, DC 20044
9 (202) 514-0997
10 David.kaplan@usdoj.gov

11 SMITH & LOWNEY, PLLC

12 By: /S/ Richard Smith
13 Marc Zemel, WSBA #44325
14 Richard A. Smith, WSBA #21788
15 Attorneys for Plaintiffs
16 2317 E. John St.
17 Seattle, WA 98112
18 Tel: (206) 860-2883
19 Fax: (206) 860-4187
20 richard@smithandlowney.com
21 marc@smithandlowney.com

22 /S/ Theodore Knight
23 Theodore Clare Knight, WSBA# 39683
24 Attorney for Intervenor the Spokane Tribe of Indians
25 9121 NE Briar Rose Lane
26 Bainbridge Island, WA 98110
27 (509) 953-1908
28 ted@tcklaw.com

29 Stipulated to the relief requested, by:

FOSTER GARVEY, PC

By: /S/ John Nelson
John Ray Nelson, WSBA #16393
Lori Terry Gregory, WSBA #22006
Attorneys for Intervenor Spokane County
1111 Third Ave., Ste. 3400
Seattle, WA 98101
(206) 447-4400
john.nelson@foster.com
lori.terry@foster.com

1 PERKINS COIE LLP

2 By: /S/ Margaret Hupp
3 Margaret C. Hupp, WSBA #43295
4 Attorneys for Intervenor Kaiser Aluminum Washington LLC
5 1201 Third Ave., Ste. 4800
6 Seattle, WA 98101
7 (206) 359-8000
8 MHupp@perkinscoie.com

9 BOB FERGUSON
10 Attorney General

11 By: /S/ Ronald Lavigne
12 Ronald L. Lavigne, WSBA #18550
13 Attorneys for Intervenor State of Washington, Dept. of Ecology
14 P.O. Box 40117
15 Olympia, WA 98504
16 (360) 586-6751
17 RonaldL@atg.wa.gov